IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8631 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATHEKHAN SORAMKHAN HEAD CONSTABLE

Versus

DIST SUPDT OF POLICE

Appearance:

MR IS SUPEHIA for Petitioner

MR PREMAL JOSHI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/04/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner challenged the communication dated 4.4.1989 passed by the District Superintendent of Police, Gandhinagar calling upon the petitioner to pay a sum of Rs.9438/- on the ground that the petitioner had not vacated the Government quarters at Gandhinagar even after the petitioner's transfer from Gandhinagar to different places and, therefore, the market rent was

required to be paid by the petitioner at the rate of Rs.786.50.

2. Mr Supehia, learned counsel for the petitioner has submitted that the petitioner was not allotted any Government quarters at any of the places where the petitioner was transferred from Gandhinagar and that the petitioner was also not paid any HRA. Hence, the petitioner was not liable to pay any additional amount by way of market rent or otherwise. Mr Supehia has further submitted that in any view of the matter the impugned order is illegal. The same is passed without giving the petitioner an opportunity of being heard.

3. On the other hand, Mr Premal Joshi, learned AGP appearing for the respondents has submitted that since the petitioner had not vacated the Government quarters even after his transfer, the impugned order was justified.

4. While admitting the petition on 13.12.1990, this Court had granted ad-interim relief restraining the respondent from recovering any amount from the pay of the petitioner and staying the implementation of the aforesaid impugned communication dated 4.4.1989 at Annexure "A" to the petition.

5. Having heard the learned counsel for the parties, it appears to the Court that the petition deserves to be allowed and the impugned communication deserves to be quashed and set aside as the respondents are seeking to recover from the petitioner market rent which is in the nature of penal rent without giving the petitioner any opportunity of being heard.

On this short ground alone, the petition deserves to be allowed and the impugned communication deserves to be quashed and set aside without prejudice to the rights of the respondents to pass appropriate orders in accordance with law after giving the petitioner an opportunity of being heard.

6. The petition is accordingly allowed. The impugned communication dated 4.4.1989 at Annexure "A" to the petition is quashed and set aside without prejudice to the rights of the respondent authorities to pass appropriate orders in accordance with law after giving the petitioner an opportunity of being heard.

Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

April 25, 2000 (M.S. Shah, J.)
sundar/-